

Article 7: Previously Conforming Premises and Uses
(Added 12-9-1997 by O-18451 N.S.; effective 1-1-2000.)

Division 1: General Review Procedures for Previously Conforming Premises and Uses
(Added 12-9-1997 by O-18451 N.S.; effective 1-1-2000.)

§127.0101 Purpose of Procedures for Previously Conforming Premises and Uses

The purpose of these procedures is to establish a review process for the *development*, maintenance, and operation of *previously conforming premises* and uses. Because of changes in the City's zones and zoning regulations over the years, many *structures* that were built, or uses that were established, in compliance with the applicable regulations at the time of their *development* no longer comply with existing regulations. In order to clarify this status, and to avoid confusion with illegal premises and uses, the term "*previously conforming*" is used to describe these situations and has the same meaning as "*nonconforming*". The intent of these procedures is to allow certain, potentially compatible, *previously conforming premises* and uses, subject to special regulations and conditions, unless the *previously conforming premises* or uses adversely impact the public health, safety, or welfare.

(Added 12-9-1997 by O-18451 N.S.; effective 1-1-2000.)

§127.0102 General Rules for Previously Conforming Premises and Uses

The following general rules apply to all *previously conforming premises* and uses:

- (a) *Previously conforming premises* or uses must have been established in compliance with all permit requirements and must have been lawful until a change in the applicable zoning regulations made the *premises* or uses *previously conforming*.
- (b) The property owner or person asserting *previously conforming* rights for a *premises* or use has the burden to provide the City Manager with sufficient documentation to establish the existence of the *previously conforming premises* or use.
- (c) Documentation of *market value* shall be in accordance with procedures established by the City Manager.

- (d) *Previously conforming premises* and uses that comply with the provisions of this division may continue to exist and operate unless an amortization period is specified elsewhere in the Municipal Code.
- (e) Sale or transfer of the property or change of ownership does not terminate rights to the *previously conforming premises* or use, unless the owner agrees to such a condition as part of a permit or administrative or judicial order.
- (f) *Previously conforming premises* and uses are subject to all other regulations and any *development permits* that may otherwise be required by the Land Development Code. The required review process shown in Table 127-01A and described in Sections 127.0103 through 127.0108 pertains only to the review required for the *previously conforming premises* or use. Proposed *development* sites located in the Coastal Overlay Zone or other geographic overlay zones are subject to the regulations of, and may require *development permit* review in accordance with, those overlay zones. The *previously conforming* regulations do not grant any deviation from the height regulations of the Coastal Height Limit Overlay Zone or any other height limit overlay zone.
- (g) If a *previously conforming premises* or use is brought into conformance by a change in use or new *development*, the *previously conforming* status is terminated and the *premises* or use cannot revert to a *previously conforming* status.
- (h) Regulations for *premises* that have *previously conforming* parking are found in Section 142.0510(d).
- (i) Regulations for *premises* that have *previously conforming* landscaping are found in 142.0410.
(Added 12-9-1997 by O-18451 N.S.; effective 1-1-2000.)

§127.0103 Review Process for Previously Conforming Premises and Uses

The required review process for different types of proposed *development* or activity, based on the *previously conforming* category, such as existing *structural envelope*, *density*, and uses are shown in Table 127-01A through 127-01C. If the proposed *development* includes more than one *previously conforming* category, all corresponding regulations, as described in Sections 127.0104 through 127.0108 apply.

(a) *Previously Conforming Structural Envelope*

Table 127-01A
Review Process for Previously Conforming Structural Envelope

Type of <i>Development Proposal</i>	Applicable Sections	Required Development Permit/Decision Process
Maintenance, repair or alteration (less than or equal to 50% of <i>market value</i> of entire <i>structure</i> or improvement) that does not expand the <i>structural envelope</i> .	127.0104	CP/Process 1
Maintenance, repair or alteration (greater than 50% of <i>market value</i> of entire <i>structure</i> or improvement) that does not expand the <i>structural envelope</i> .	127.0104	CP/Process 1
Reconstruction (following fire, natural disaster, act of the public enemy) for residential <i>structures</i> or for nonresidential <i>structures</i> when the cost of reconstruction is less than 50 percent of <i>market value</i> .	127.0105(a), (b) and (e)	<u>CP/Process 1</u>
Reconstruction (following fire, natural disaster, act of the public enemy) for nonresidential <i>structures</i> when the cost of reconstruction is greater than 50 percent of <i>market value</i> .	127.0105(c) and (d)	<u>NDP/Process 2</u>
Expansion/enlargement, where new construction conforms with all current development regulations.	127.0106(a) and (b).	CP/Process 1
Expansion/enlargement where new construction requests a reduction of up to 20% from required <i>setbacks</i> .	127.0106(c).	NDP/Process 2

Legend to Table 127-01A:

CP = Construction Permit

NDP = Neighborhood Development Permit

(b) *Previously Conforming Density*

Table 127-01B
Review Process for Previously Conforming Density

Type of <i>Development Proposal</i>	Applicable Sections	Required Development Permit/Decision Process
Maintenance, repair or alteration (less than or equal to 50% of <i>market value</i> of entire <i>structure</i> or improvement) that does not expand the <i>structural envelope</i> .	127.0104.	CP/Process 1
Maintenance, repair or alteration (greater than 50% of <i>market value</i> of entire <i>structure</i> or improvement) that does not expand the <i>structural envelope</i> .	127.0104.	NDP/Process 2
Reconstruction (following fire, natural disaster, act of the public enemy) for residential <i>structures</i> or for nonresidential <i>structures</i> when the cost of reconstruction is less than 50 percent of <i>market value</i> .	127.0105(a), (b) and (e)	<u>CP/Process 1</u>
Reconstruction (following fire, natural disaster, act of the public enemy) for nonresidential <i>structures</i> when the cost of reconstruction is greater than 50 percent of <i>market value</i> .	127.0105(c) and (d)	<u>NDP/Process 2</u>
Expansion/enlargement, where new construction conforms with all current development regulations.	127.0106(a) and (b).	NDP/Process 2
Expansion/enlargement where new construction requests a reduction of up to 20% from required <i>setbacks</i> .	127.0106(c).	NDP/Process 2

Legend to Table 127-01B:

CP = Construction Permit
NDP = Neighborhood Development Permit

(c) *Previously Conforming Use*

Table 127-01C
Review Process for Previously Conforming Use

Type of <i>Development Proposal</i>	Applicable Sections	Required Development Permit/Decision Process
Maintenance, repair or alteration (less than or equal to 50% of <i>market value</i> of entire <i>structure</i> or improvement) that does not expand the <i>structural envelope</i> .	127.0104	CP/Process 1
Maintenance, repair or alteration (greater than 50% of <i>market value</i> of entire <i>structure</i> or improvement) that does not expand the <i>structural envelope</i> .	127.0104	NDP/Process 2
Reconstruction (following fire, natural disaster, act of the public enemy).	127.0105	<u>CP/Process 1⁽¹⁾</u>
		<u>NDP/Process 2⁽²⁾</u>
Expansion/enlargement, where new construction conforms with all current development regulations.	127.0106(a) and (b)	<u>NDP/Process 2⁽³⁾</u>
Expansion/enlargement where new construction requests a reduction of up to 20% from required <i>setbacks</i> .	127.0106(c)	<u>NDP/Process 2⁽³⁾</u>
Change to another <i>previously conforming</i> use within the same use category.	127.0107	<u>CP/Process 1</u>
Operating a <i>previously conforming</i> use, including resumption of <i>previously conforming</i> use up to 2 years after discontinuance.	127.0108(a) and (c)	<u>CP/Process 1</u>
Resumption of a <i>previously conforming</i> use after 2 years discontinuance.	127.0108(b) and (c)	<u>NUP/Process 2</u>

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Increase in <i>floor</i> area to a <i>previously conforming</i> use (less than or equal to 20% of <i>gross floor area</i> of the existing <i>structure</i>).	127.0109	<u>NUP/Process 2</u> ⁽³⁾
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Legend to Table 127-01C:

CP = Construction Permit
NDP = Neighborhood Development Permit
NUP = Neighborhood Use Permit

Footnotes to Table 127-01C:

- (1) Applies to reconstruction of *previously conforming structures*, with *previously conforming density* or *previously conforming* residential uses with no limitation on cost. Applies to partial reconstruction of *structures* with *previously conforming* nonresidential uses (less than or equal to 50 percent of *market value* of entire *structure* or improvement).
- (2) Applies to reconstruction of *previously conforming* nonresidential uses when the cost of reconstruction is greater than 50 percent of *market value*.
- (3) *Findings* of fact for this permit shall include the presumption that expansion of the following *previously conforming* uses would be detrimental to the public health, safety, and welfare: industrial uses in residential zones, auto repair or dismantling uses in residential zones, and any use in a zone that would require a Conditional Use Permit in accordance with Section 126.0303.
(Amended 6-12-2001 by O-18948 N.S.; effective 12-12-2001.)

§127.0104 Maintenance, Repair, or Alteration of Previously Conforming Structures Is Required

- (a) Maintenance, repair, or alteration of a *previously conforming structure*, where the new construction would not expand beyond the existing *structural envelope*, is subject to the review procedures required for conforming *structures* except as described in Section 127.0104(b).
- (b) Maintenance, repair, or alteration of a *previously conforming structure* containing *previously conforming density* or a *previously conforming* use, where the cost of the new construction would be greater than 50 percent of the *market value* of the existing *structure*, and the new construction would not expand beyond the existing *structural envelope*, requires a Neighborhood Development Permit.

(Added 12-9-1997 by O-18451 N.S.; effective 1-1-2000.)

§127.0105 Reconstruction of Previously Conforming Structures

- (a) The reconstruction provisions of this section apply only to rebuilding of a *previously conforming structure* that has been destroyed, in whole or in part, as a result of fire, natural disaster, or act of the public enemy.
- (b) Reconstruction of any *previously conforming structure*, including a *structure* with *previously conforming density* or a *previously conforming* residential use, is subject to the same review procedures required for conforming *structures*.
- (c) Partial reconstruction of a *structure* containing a *previously conforming* nonresidential use is subject to the review procedures required for conforming *structures*, if the cost of the reconstruction is less than or equal to 50 percent of the *market value* of the *structure* prior to destruction.
- (d) Reconstruction of a *structure* containing a *previously conforming* nonresidential use requires a Neighborhood Development Permit if the cost of the reconstruction is greater than 50 percent of the *market value* of the *structure* prior to the destruction.
- (e) This section, or any Neighborhood Development Permit issued for reconstruction, does not exempt any person from any requirement to obtain other applicable *development permits* and does not grant any deviation from the height limit regulations of the Coastal Height Limit Overlay Zone or any other applicable height limit overlay zone. All *construction permits* that would be required for conforming *premises* or uses must be obtained for reconstruction of *previously conforming premises* or uses.

(Added 12-9-1997 by O-18451 N.S.; effective 1-1-2000.)

§127.0106 Expansion or Enlargement of Previously Conforming Structures

- (a) Proposed expansion or enlargement of a *previously conforming structural envelope* is subject to the procedural requirements for conforming *structures* if the existing *density* and use comply with all applicable development regulations of the Land Development Code and if the new construction will comply with all applicable development regulations.
- (b) Proposed expansion or enlargement of a *previously conforming structural envelope*, where the existing *previously conforming structure* does not comply with applicable zoning regulations as to *density* or use, requires a Neighborhood Development Permit.

- (c) Proposed expansion or enlargement of a *previously conforming structural envelope* where the expansion would comply with regulations, but which proposes a reduction less than or equal to 20 percent from a required *setback*, requires a Neighborhood Development Permit.
- (d) Within the coastal Overlay Zone, if the proposal involves the demolition or removal of 50% or more of the exterior walls of an existing structure, the *previously conforming rights* are not retained for the new structure.

(Added 12-9-1997 by O-18451 N.S.; amended 10-18-1999 by O-18691 N.S.; effective 1-1-2000; amended 6-19-2000 by O-18814 N.S.)

§127.0107 Change in Use of a Previously Conforming Use

- (a) A change in use from a *previously conforming* use to another use within the same use category of the Use Regulations Tables of Chapter 13, Article 1, outside the Coastal Overlay Zone, is considered a change of use of equal intensity and retains the *previously conforming rights* for the new use. A change of use from a *previously conforming* use to a use in another use category or to a separately regulated use category of the Use Regulations Tables of Chapter 13, Article 1, is not allowed.
- (b) Within the Coastal Overlay Zone, if a change in use from a previously conforming use to another use within the same use category of the Use Regulation Tables of Chapter 13, Article 1 involves any intensification of use, the *previously conforming rights* are not retained for the new use. For the purposes of Section 127.0107, intensification of use means a change in the use of a *lot* or *premises* which, based on the provisions of the applicable zone, requires more off-street parking than the most recent legal use on the *premises*.
- (c) A change in the number of business licenses issued for the same use within the same square footage is not considered an intensification of use.

(Amended 6-12-2001 by O-18948 N.S.; effective 12-12-2001.)

§127.0108 Abandonment of Previously Conforming Uses

- (a) A *previously conforming* use may continue to operate or may resume operations if discontinued for a period of less than 2 consecutive years. Resumption of operations within 2 years is subject to the review procedures for conforming uses.

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- (b) It is unlawful to reinstate any *previously conforming* use after the use has been discontinued for a period of 2 or more consecutive years, unless the property owner has obtained a Neighborhood Use Permit. Discontinuance of the use for a period of 2 or more consecutive years creates a presumption in favor of abandonment, against which the owner or person asserting *previously conforming* rights may offer evidence.
- (c) If the *previously conforming* use is discontinued temporarily while repairs, remodeling, or major alterations of the *structure* are under construction, maintenance of an active *construction permit* and continuance of the Business Tax Certificate constitutes conclusive evidence that the use has not been abandoned during the construction.

(Added 12-9-1997 by O-18451 N.S.; effective 1-1-2000.)

§127.0109 Expansion of a Previously Conforming Use

- (a) A 20 percent or less gross floor area expansion of a structure with a *previously conforming* use requires a Neighborhood Use Permit.
- (b) When making the *findings* for a Neighborhood Use Permit for the proposed expansion of a *previously conforming* use, the following uses are conclusively presumed to be detrimental to public health, safety, and welfare:
 - (1) Industrial uses in residential zones;
 - (2) Commercial and personal vehicle repair and maintenance in residential zones; and
 - (3) Any use that requires a Conditional Use Permit in the applicable zone in accordance with Section 126.0303.

(Added 12-9-1997 by O-18451 N.S.; amended 10-18-1999 by O-18691 N.S.; effective 1-1-2000.)